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ABSTRACT

This document provides guidance to postsecondary institutions for implementation of and compliance with the Family Educational Rights and Privacy Act of 1974 as amended. It is intended to serve all institutional components that possess and maintain education records about students. The historical background of the act is reviewed and descriptions are given of its essence, institutions and records to which it applies, and enforcement. Requirements for compliance are discussed with regard to written institutional policy, notice to students of their privacy rights, and students' access to their education records. Procedures and strategies for compliance include (1) disclosure of education record information, (2) challenge of the contents of education records, and (3) records of requests and disclosures. Appended are sample forms, the act itself, final regulations, and the Internal Revenue Code of 1954, Section 152. (LBH)

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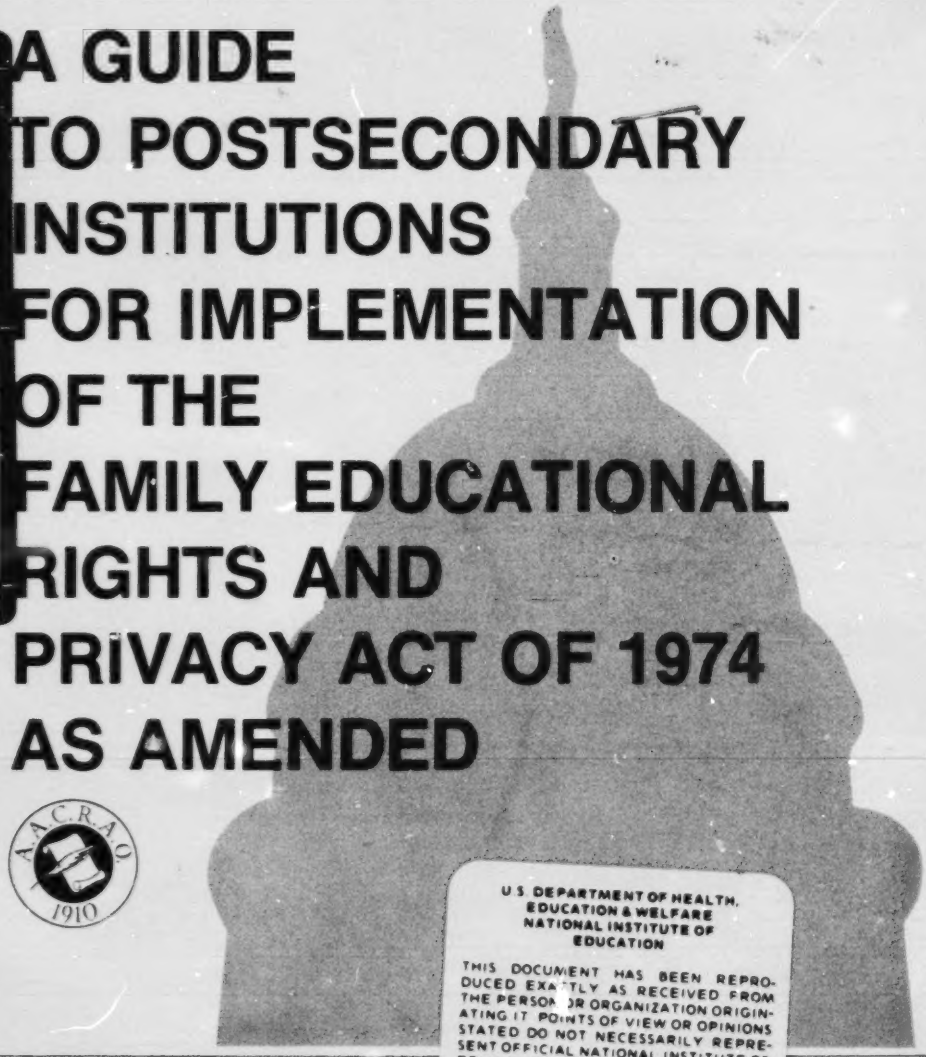

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THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974
"BUCKLEY AMENDMENT"
AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS
1976

AMERICAN ASSOCIATION OF COLLEGIATE

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TASK FORCE

ON

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

"BUCKLEY AMENDMENT"

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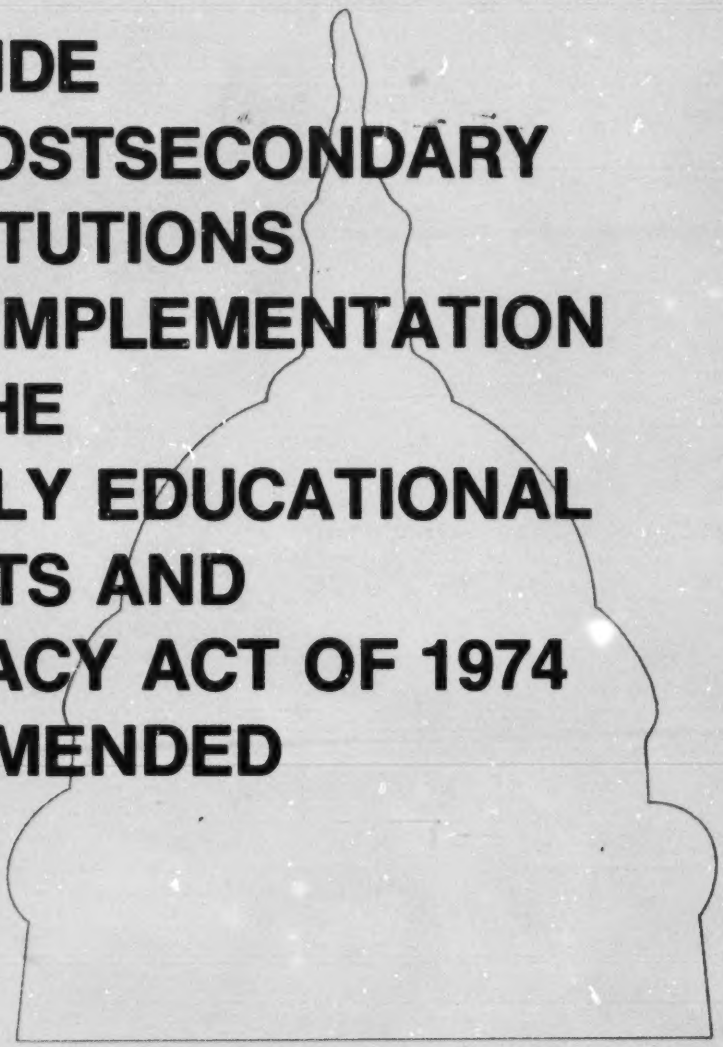

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AMERICAN ASSOCIATION OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICERS

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I. STATEMENT OF PURPOSE

The basic purpose of this document is to provide guidance to **postsecondary institutions** for implementation of and compliance with the Family Educational Rights and Privacy Act of 1974 as amended. It is intended to serve all institutional components which possess and maintain education records about students.

The purpose of the Act is to require educational institutions and agencies to conform to fair information practices: that is, persons who are subjects of data systems must be informed of the existence of such systems, be able to learn what data about themselves are on record, be assured that data are used only for intended purposes, be able to correct or amend records, and be assured that those responsible for data systems take reasonable precautions to prevent misuse of the data. Information about individuals should be retained only so long as it is valid and useful, and those responsible for data systems have an obligation to destroy information when conditions under which it was collected no longer prevail.

Many institutions will have to make only minor adjustments to their existing policies, procedures, and practices to conform with the requirements of the Act. The basic concept of the Act is that an individual's personal privacy is directly affected by the kinds of disclosures and the uses of personally identifiable information contained in a record.

These guidelines are intended to serve multiple users including officials who are charged with the responsibility for writing the institutional policy required by the Act. The latter will want to focus their attention first on **Written Institutional Policy** under REQUIREMENTS FOR COMPLIANCE. The remaining subsections under Requirements for Compliance, Notice to Students of Their Privacy Rights and Students' Access to Their Education Records, as well as the entire section, Procedures and Strategies for Compliance, define specific policies and procedures to be summarized in the institutional policy.

II. INTRODUCTION

A. Historical Background

The Department of Health, Education, and Welfare issued, in the June 17, 1976 **Federal Register,** the final regulations for implementing the Family Educational Rights and Privacy Act of 1974 (P.L. 93-380, §513), as amended (P.L. 93-568, §2). The effective date of the Act was November 19, 1974. The amendment is popularly known as the "Buckley Amendment." The June 17, 1976 final regulations contain all regulatory provisions pertaining to the Family Educational Rights and Privacy Act and supersede the earlier publications of regulations, providing the public with a single document. The Act and the June 17, 1976 regulations are contained in an appendix to this Guide for those who wish to refer to the source documents.

An additional document of reference for those exploring the full complexity of the law is in the "comments section" which precedes the "Final Rule on Education Records" which appeared in the **Federal Register**, Thursday, June 17, 1976, Vol. 40, No. 118.

The American Association of Collegiate Registrars and Admissions Officers was assisted by representatives of the following Associations in developing a comprehensive but concise set of recommended institutional guidelines and procedures for postsecondary institutions to implement the Family Educational Rights and Privacy Act of 1974 as amended: **American Council on Education, National Association of Student Financial Aid Administrators, National Association of College and University Attorneys, College Entrance Examination Board,** and the **Educational Testing Service.** Representatives identified by these associations reviewed the draft copy of this document and offered comments and suggested revisions. These comments were carefully considered and utilized as appropriate in the production of the final guide.

B. Essence of the Act

- Students upon reaching age 18 or attending postsecondary institutions must be permitted to inspect and review their own education records, to the exclusion of their parents. There are no rights guaranteed under the Act for parents of students attending a postsecondary institution.

- Institutions may not disclose information about students nor permit inspection of their records without their permission unless such action is covered by certain exceptions as stipulated in the Act.

- Students or parents are unlikely to be successful if bringing suit to enforce provisions of the Act. The only enforcement procedure provided by the Act is through complaint to an office in the Department of Health, Education, and Welfare, and the only penalty is withdrawal of Office of Education funds from the institution.

- Institutions receiving no funds administered by the Office of Education have no obligation for compliance with the Act; therefore, there is no penalty for noncompliance under the Act.

- Institutions may grant a student more rights than those guaranteed by the Act.

C. To Which Institutions Does the Act Apply?

The Act applies to all educational institutions which either receive funds directly

from the Office of Education or which have students in attendance who receive funds through programs administered by the Office of Education. Funds will be considered to have been made available to the institution, and hence the requirements will apply, when funds: (1) are provided by (sub)grant or (sub)contract; or (2) are provided to students attending the institution and all or part of the funds are paid to the institution by those students for educational purposes such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program.

D. To Whose Records Does the Act Apply?

These guidelines apply to the education records of persons who are or have been in attendance at postsecondary institutions, **including students in co-operative and correspondence study programs.** They do not apply to records of applicants for admission. Neither do these guidelines apply to records of students who are applying for admission to a component unit in the postsecondary institution that they are currently attending or have attended.

E. To What Records Does the Act Apply?

These guidelines apply to all education records, essentially any records with the students' name on them; files, documents, and materials in whatever medium, which contain information directly related to the student and from which the student can be individually identified. (For exclusions see "Education Records" in DEFINITION OF TERMS, Section III, Page 8.)

F. Enforcement

Responsibility for the enforcement of the Act has been assigned to an office within the Department of Health, Education, and Welfare, which will accept and investigate complaints and attempt to bring about compliance through voluntary means. Failure to achieve compliance will result in a hearing before a Health, Education, and Welfare Review Board which will recommend to the Secretary whether or not a penalty will be imposed upon the institution. The penalty for noncompliance with the Federal regulations is withdrawal of Office of Education funds from the institution.

It should be noted that the Act is more permissive than the privacy laws of some states. If a conflict exists between the Family Educational Rights and Privacy Act of 1974 and State or local law, and if an institution determines that it cannot comply with the requirements of the Act, it shall so advise The Family Educational Rights and Privacy Act Office (FERPA) Department of Health, Education, and Welfare, 330 Independence Ave., S.W., Washington, D.C. 20201, within 45 days of that determination giving the text and legal citation of the conflicting law. These guidelines, therefore, should not be interpreted to reduce the stringency of such State laws. They counsel common sense, good judgment, perspective, and integrity for compliance by postsecondary institutions in the implementation of the Act.

The remainder of this document sets forth recommendations and procedures to help institutions to comply with the Act. The Act and the final regulations are printed in the appendix of this document for ready reference.

The reader should note that guidelines by definition are interpretive and, therefore, are not to be taken as the law. These guidelines are to be used along with the Act and the final regulations.

III. DEFINITION OF TERMS

Understanding key terms is essential to the interpretation of the Act and the final regulations for its implementation. Some definitions which carry substantive meaning for understanding the Act, are listed here for the convenience of the reader. The regulations, as contained in the Appendix to this Guide, provide **all** definitions.

Act: means the General Education Provisions Act, Title IV of Public Law 90-247, as amended.

Attendance: includes but is not limited to (a) attendance—in person or by correspondence study (program) and (b) the period during which a person is working under a work-study (cooperative) program.

Directory Information: may include the following student information: student's name, address, telephone number, date and place of birth, major fields of study, participation in officially recognized activities and sports, weight and height of athletic team members, dates of attendance, degrees and awards received, most recent educational institution attended, **and other similar information as defined by the institution.**

Disclosure: is defined as permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally, in writing, by electronic means, or by any other means to any party.

Educational Institution: means any public or private agency or institution which receives funds from any Federal program under the administrative responsibility of the U.S. Commissioner of Education. The term refers to the institution as a whole, including all of its components (e.g., schools or departments in a university).

Education Records: means those records which are (1) directly related to a student, and (2) maintained by the institution or by a party acting for the institution. The term "education records" does **not** include:

a. records of instructional, supervisory, administrative, and certain educational personnel which are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except, a substitute, who performs on a **temporary basis,** (as defined in the institutional personnel policy) the duties of the individual who made the record.

b. records of a law enforcement unit of the institution which are maintained apart from other institutional records, maintained solely for law enforcement purposes, and not disclosed to individuals other than law enforcement officers of the same jurisdiction **so long as** education records maintained by the institution are not disclosed to the personnel of the law enforcement unit.

c. records relating to individuals, who are employed by the institution, which are made and maintained in the normal course of business, relate exclusively to individuals in their capacity as employees, and are not available for use for any other purpose. (Records of

individuals in attendance at an institution who are employed as a result of their status as students are education records—e.g., work-study.)

d. records relating to a student (See page 10 for definition of "student") which are: created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, to be used solely in connection with the provision of treatment to the student; and not disclosed to anyone other than individuals providing such treatment, **so long as** the records can be personally reviewed by a physician or other **appropriate** professional of the student's choice. (Appropriateness may be determined by the institution.) "Treatment" in this context does not include remedial educational activities or activities which are part of the program of instruction at the institution.

e. records of an institution which contain **only** information relating to a person after that person is no longer a student at the institution, (e.g., information gathered on the accomplishments of alumni).

f. records which contain information on the spiritual and psychological development of candidates for the priesthood, or rabbinite, or religious order that may be maintained, in addition to basic academic records, by seminaries, schools, or departments of divinity or theology which are part of colleges or universities. Access to such non-academic records, which may involve complex constitutional questions, was not treated in the final regulations and must be considered on a case-by-case basis.

Eligible Student: refers to a student who has reached the age of 18 **or** is attending an institution of postsecondary education. Since these guidelines are specifically for postsecondary institutions, "student" as used in this document is presumed always to refer to an eligible student. In non-postsecondary institutions parents of students have additional rights not covered in this Guide. In postsecondary institutions **the rights accorded to and the consent required of the parents shall only be accorded to and required of the eligible student.**

Financial Aid: means a payment of funds to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

Institution of Postsecondary Education: means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided.

Legitimate Educational Interest: means the demonstrated need to know by those officials of an institution who act in the student's educational interest, including faculty, administration, clerical and professional employees, and other persons who manage student record information. (Although the Act does not define "legitimate educational interest," it states that institutions must specify the criteria for determining it. This is a recommended definition.)

Panel: means the institutional body which will adjudicate cases of the records that are challenged.

Parent: includes a parent, a guardian, or an individual acting as a student's parent in the absence of a parent or a guardian.

Party: means an individual, agency, institution, or organization.

Personally Identifiable: means data or information which includes (1) the name of the student, the student's parent, or other family members; (2) the student's address; (3) a personal identifier (such as a social security number or student number); or (4) a list of personal characteristics, or other information which would make the student's identity easily traceable.

Record: means any information or data recorded in any medium, (e.g., hand writing, print, tapes, film, microfilm, microfiche).

School Officials: are those members of an institution who act in the student's educational interest within the limitations of their need to know, which may include faculty administration, clerical, and professional employees and other persons who manage student record information. (Although the Act does not define "school officials", it states that institutions must specify the criteria for determining them. This is a recommended definition.)

Student: includes any individual with respect to whom an educational institution maintains education records. The term does not include an individual who has **not** been in attendance at the institution. An individual who is or has been enrolled in one component unit of an institution, who applies for admission to a second unit, has no right to inspect the records accumulated by the second unit until enrolled therein.

IV. REQUIREMENTS FOR COMPLIANCE

To comply with the Act, each educational institution must take three basic steps as detailed in this section under **Written Institutional Policy, Notice to Students of Their Privacy Rights,** and **Students' Access to Their Education Records.**

A. Written Institutional Policy

Each institution must establish a written policy and statement of adopted procedures covering privacy rights of students, which must be available to students and other interested parties upon request, which describes institutional policies and procedures in areas of access, release, and challenge of education records, and which informs students where records are kept. This requirement wisely provides a great measure of institutional autonomy in establishing local policy and procedures and establishing institutional control of its responsibilities under the Act. As a consequence, this policy-making requirement should be taken most seriously.

This policy document must specify institutional intent to:

1. Inform annually students of their rights. (See: **Notice to Students of Their Privacy Rights,** IV, B-1, Page 12.)

2. Permit students to inspect and review their education records (See: **Students' Access to Their Education Records,** IV, C, Page 14.)

   a. Provide a statement of procedure for the inspection and review of education records and for obtaining copies thereof.

   b. Provide a description of circumstances that may establish legitimate cause for the denial of a request for a copy of an education record. (For example, a copy of the academic record for which a financial "hold" exists, or a transcript of an original or source document which exists elsewhere.)

   c. Provide a schedule of fees for copies of education records.

3. Provide an all-inclusive list of types and location of education records with the **titles** and addresses of the officials responsible for those records.

4. Inform students that no personally identifiable information from education records will be disclosed without their prior written consent except when prior written consent is not required by the Act. (See: **Disclosure of Education Record Information,** Section V, A-2, 3, 4, Pages 16, 17.)

   a. Provide a statement which specifies what information will be disclosed to which school officials within the institution **without obtaining prior written consent** from the student, and the criteria for determining who will be considered "school officials" and what "legitimate educational interests" will entitle school officials to have access to education records. (See: DEFINITION OF TERMS, Section III, Page 8.)

   ***N.B.** If institutions wish to disclose information about students to their parents by any established procedure, (See: **Disclosure of Education Record Information,** Section V, A, Page 16.), such procedure should be explicitly stated in the Written Institutional policy.*

b. Specify which items of information will be designated by the institution as public or Directory Information.

5. Maintain records of requests for disclosure of personally identifiable information and permit students to review those records. (See: **Records of Requests and Disclosures,** Section V, C, Page 19.)

6. Provide students with an opportunity to seek amendment or correction of education records. (See: **Challenge of the Contents of Education Records,** Section V, B, Page 18.)

a. Accept a request to correct or amend education records containing inaccurate, misleading, or incomplete information.

b. Advise students of their rights to a hearing on the issue, if education records are not corrected or amended.

c. Permit students, dissatisfied with the results of a hearing, to place a statement in the education record in question commenting upon the information therein, and/or setting forth any reason for disagreement with the institutional decision not to correct or amend the record. Such a statement shall become a part of the information contained in the education record and will be disclosed with it.

B. Notice to Students of Their Privacy Rights

The institution must inform students of their rights under the Act. Two types of notification are required.

1. Institutions must **annually notify** students of their rights under the Act. (Former students need not be notified.) The method of annual notification is left to the discretion of the institution, so long as the means employed are reasonably effective to communicate those rights. For example, it may be met by individual student notification of publication in college catalogs, schedules, or student newspapers. (See: Example in Appendix. Sample Form No. 1, Page 24.) The annual notice must specify student rights covered by the Act as follows:

a. the right to inspect and review information contained in education records. (See: **Students' Access to Their Education Records,** IV, C, Page 14.)

b. the right to challenge the contents of their education records. (See: **Challenge of the Content of Education Records,** Section V, B-1, 2, Page 18.)

c. the right to a hearing if the outcome of the challenge is unsatisfactory. (See: **Challenge of the Contents of Education Records,** Section V, B-3-7a, Pages 18, 19.)

d. the right to submit an explanatory statement for inclusion in the education record if the outcome of the hearing is unsatisfactory. (See: **Challenge of the Contents of Education Records,** Section V, B-7b, Page 19.)

e. the right to prevent disclosure, with certain exceptions, of personally identifiable information. (See: **Disclosure of Education Record Information,** Section V, A, Page 16.)

f. the right to secure a copy of the institutional policy, which includes the location of all education records. (See: **Written Institutional Policy,** IV, A, 3, Page 11.)

g. the right to file complaints with the Department of Health, Education and Welfare, concerning alleged failures by institutions to comply with the Act. Written complaints should be directed to The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Avenue, S.W., Washington, D.C. 20201.

2. Institutions must give **public notice** of the categories of personally identifiable information which the institution has designated as public or Directory Information.

a. Types of information which may be designated as public or Directory Information are listed in DEFINITION OF TERMS, (Section III, Page 8) of these guidelines.

b. Items of Directory Information may be "grouped" into categories for release to the public for specific purposes. (See: Appendix, Sample Form No. 2, Page 25.) In such cases, institutions may restrict the dissemination of an **entire category** if the student requests exclusion of any items of Directory Information.

c. Categories of information designated as public or Directory Information may be included in the annual notice. The Act provides no additional direction regarding how often, or by what means, public notice must be given; however, it seems prudent to assume that public notice should be given annually.

d. Specific procedures must be outlined to inform students how to withhold categories of public or Directory Information. Students must be given a specific period of time within which they must inform institutions, in writing, that such categories of information are to be withheld. (See: **Disclosure of Education Record Information,** Section V, A-4, Page 17.) Students should be alerted to the possible undesirable consequences of withholding Directory Information. Institutions should take steps to avoid the tactical error of developing procedures which make it all-too-easy for students to make a casual decision to exclude all or most of the categories from Directory Information. Institutions are advised to formulate procedures which elicit the considered judgment by the students when they exercise their right to exclude Directory Information.

e. To insure that the rights of students concerning release of information are upheld and to ease the burden of institutional record keeping, it is recommended that students be required to file requests for non-disclosure on an annual basis if withholding of Directory Information is desired; therefore, such requests need only be honored for one academic year or a shorter period of time if it suits their purpose.

C. Students' Access to Their Education Records

The following requirements on students' rights of access, including limitations on those rights and conditions and procedures under which students may waive those rights, must be brought to the attention of those responsible for education records within the institution.

1. Students and former students have rights to inspect and review their education records. The institution may require that a staff member be present during inspection and review. (See: Appendix, Sample Form, No. 4, Page 27.)

2. Procedures must be developed to permit students to inspect and review education records (except as limited in paragraph 3c below) within a maximum of 45 days after they request to do so. Inspection and review include:

   a. an explanation and interpretation of the record.

   b. the right to a copy of the education record. A copy may be refused, but only if in doing so, the institution does not limit the student's right to inspect and review that record. For example, a copy of the academic record could be refused if a "hold" for non-payment of financial obligation exists, but the student maintains the right to inspect and review the record.

3. Limitations exist on students' rights to inspect and review their education records. The institution is **not** required to permit students to inspect and review the following:

   a. financial information submitted by parents.

   b. confidential letters and recommendations placed in their files prior to January 1, 1975, provided these letters were collected under established policies of confidentiality and were used only for the purposes for which collected.

   c. confidential letters and recommendations associated with admissions, employment or job placement, or honors to which students have waived rights of inspection and review. (See paragraph 4 below.)

   d. education records containing information about more than one student; however, in such cases the institution **must permit access** to that part of the record which pertains only to the inquiring student.

4. Students may waive any or all of their rights under the Act. The right of waiver is subject to the following conditions:

   a. that institutions **do not require** waivers.

   b. that no institutional service be denied students who fail to supply waivers, (although institutions are free to request waivers).

c. that the documents to which students have waived the right of access are used only for the purposes for which collected. If used for other purposes, the waivers are void and the documents may be inspected by students. Institutions would be well advised to assure all parties concerned that the instruments used for soliciting recommendations and evaluations contain the specific purposes for which they will be used and the time frame in which such forms will be destroyed.

d. that the waivers are in writing and signed by the students. Students may waive their rights to inspect and review either individual documents or classes of documents, (e.g., part or all of an admission or job placement file). They may revoke the waiver in writing, but by revoking it, they do not have the right to inspect and review documents collected while the waiver was in force.

> ***N.B.*** *Although they are not considered students under the Act, "applicants" for admission to an institution have a right to waive inspection and review of confidential letters and statements of recommendations which are a part of their admission file. If "applicants" waive their rights to access of documents, then they must upon request be given the names of all individuals providing letters and statements of recommendations.*

5. The regulations contain only one restriction pertaining to the destruction of records, which is that once students have requested access to their education records, such students' records cannot be destroyed until inspection and review have been provided. These guidelines call your attention to two additional items that an institution must not destroy unless the records to which they pertain are destroyed: (a.) "explanations" placed in the records by students and (b.) records of disclosures and requests for disclosures. However, it is incumbent upon those responsible for records systems to destroy information contained in student records and files when it is no longer valid and/or useful. (The intent of the Act would probably be well served if files were regularly purged of such items as letters of recommendations once they have been used for their original purpose.)

V. PROCEDURES AND STRATEGIES FOR COMPLIANCE

To fulfill the basic requirements for compliance with the Act, each educational institution should safeguard disclosure of personally identifiable information about students, provide opportunity for challenge of the contents of education records, and maintain adequate records of requests and disclosures as detailed in this section.

A. Disclosure of Education Record Information

1. Institutions shall obtain written consent from students before disclosing any personally identifiable information from their education records (with the exceptions as noted in Sections 2, 3, and 4 below). Such written consent must:

   a. specify the records to be released.

   b. state the purpose of the disclosure.

   c. identify the party or class of parties to whom disclosure may be made.

   d. be signed and dated by the student.

2. Institutions **must** disclose education records or components thereof **without written consent** of students to the following:

   a. students who request information from their own records. (Institutions may require written requests for student access.)

   b. authorized representatives of the following for audit and evaluation of Federal and State supported programs:

      (1) Comptroller General of the United States.

      (2) The Secretary of the United States Department of Health, Education, and Welfare.

      (3) The United States Commissioner of Education, Director of National Institute of Education, or Assistant Secretary of Education.

      (4) State educational authorities.

   c. State and local officials to whom disclosure is required by State Statute adopted prior to November 19, 1974.

3. Institutions **may** disclose education records or components thereof **without written consent** of students to the following:

   a. personnel within the institution determined by the institution to have legitimate educational interest.

   b. officials of other institutions in which the student seeks to enroll, on condition that the issuing institution makes a reasonable attempt

to inform the student of the disclosure, or makes such transfer of information a stated institutional policy.

c. persons or organizations providing to the student financial aid, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.

d. organizations conducting studies to develop, validate, and administer predictive tests, to administer student aid programs, or to improve instruction. Those organizations may not disclose personal identification of students, and information secured must be destroyed when no longer needed for their projects. Institutions are advised to obtain such assurance in writing.

e. accrediting organizations carrying out their accrediting functions.

f parents of a student who have established that student's status as a dependent according to Internal Revenue Code of 1954, Section 152. (See: **Disclosure of Education Record Information,** V, A-7, Page 18.)

g. persons in compliance with a judicial order or a lawfully issued subpeona, provided that the institution first make a reasonable attempt to notify the student.

h. persons in an emergency, if the knowledge of information, in fact, is **necessary** to protect the health or safety of the student or other persons.

4. Institutions may release **without written consent** those records identified as public or Directory Information for students who are currently enrolled, provided the following conditions are met prior to disclosure:

a. that the institution inform the students of categories designated as Directory Information.

b. that students be given opportunity to refuse disclosure of any or all categories.

c. that the students be given a reasonable period of time in which to state such refusals in writing.

5. Institutions may release **without written consent** those items identified as public or Directory Information on any student not currently enrolled.

6. Institutions are responsible for informing parties to whom personally identifiable information is released that recipients are not permitted to disclose the information to others without written consent of the students. For example:

> *"The attached information has been forwarded to you at the request of the student with the understanding that it will not be released to other parties. The Family Educational Rights and Privacy Act of 1974 prohibits release of this information without the student's written consent. Please return this material to us if you are unable to comply with this condition of release."*

7. Institutions may disclose information about students to their parents by either of two procedures:

a. by obtaining the students' written consent.

b. by having the parents establish the students' dependency as defined by Internal Revenue Code of 1954, Section 152. (See: Appendix, Internal Revenue Code of 1954, Section 152, Page 48.) An explicit institutional policy, covering "dependency" determination, should be available if release is to be made to parents under this provision. That policy for example might include:

(1) stating an intent to consider all students as "dependent" unless they specifically inform the institution within a reasonable period of time that they consider themselves to be "independent"—or—

(2) requiring a certified copy of the parents most recent Federal Income Tax Form.

B. Challenge of the Contents of Education Records

The Act does not provide details about required grievance and hearing mechanisms to be employed, but institutions should have clear channels of appeal which (a) are stated in the written institutional policy, (b) involve disinterested institutional personnel and (c) take the following provisions of the regulations into account:

1. Institutions must provide students with an opportunity to challenge the contents of their education records which the students consider to be inaccurate, misleading, or otherwise in violation of their privacy or other rights.

2. Officials who receive challenge requests must decide within a reasonable period of time whether or not corrective action consistent with the students' requests will be taken. Students must be notified of the decisions. If the decisions are in agreement with the students' requests, the appropriate records must be amended.

3. Students who are not provided full relief sought by the challenge must be informed by the appropriate official of their rights to a formal hearing on the matter.

4. Student requests for a formal hearing must be in writing. (See: Appendix, Sample Form. No. 6, Page 29.) Within a reasonable period of time after receiving the request, the appropriate official must inform students of the date, place, and time of the hearing.

5. Students must be afforded a full and fair opportunity to present evidence relevant to the issue raised. Students may be assisted or represented at the hearing by one or more persons of their choice, including an attorney, at such students' expense.

6. Hearings may be conducted by any party, including an official of the institution, provided such person does not have a direct interest in the outcome of the hearing.

7. **Decisions of the hearing panel will be final,** will be based solely on the evidence presented at the hearing, and will consist of a written statement summarizing the evidence and stating the reasons for the decisions which will be delivered to all parties concerned.

a. Institutions will correct or amend any education record in accordance with the decision of the hearing panel if the decision is in favor of the student.

b. Should the decision be unsatisfactory to the student, the appropriate official must inform the student that:

(1) the student has the opportunity to place with the education record a statement commenting on the information in the record, or a statement setting forth any reason for disagreeing with the decision of the hearing panel.

(2) the statement placed in the education record by the student will be maintained as part of the record for so long as the record is held by the institution.

(3) this record when disclosed to an authorized party, must include the statement filed by the student.

8. Rights of the challenge cannot be used to question substantive educational judgments which are correctly recorded. These rights of challenge are not intended to allow students to contest, for example, a grade in a course because it is felt a higher grade should have been assigned.

C. Records of Requests and Disclosures

All institutions subject to the provisions of the Act are required to maintain records of requests and disclosures of personally identifiable information. The records of requests, whether granted or not, shall include the names and addresses of the person(s) who requested the information and their legitimate interests in the information. Records of requests and disclosures **need not be maintained** for the following:

a. those requests made by students for their own use.

b. those disclosures made in response to written requests from students.

c. those made by school officials.

d. those specified as Directory Information.

The records of disclosures and requests for disclosures are considered a part of the students' education record; therefore, they must be retained as long as the education records to which they refer are retained by the institution.

The records of requests and disclosures must be maintained in a form which permits students, responsible institutional officials, and Federal auditors to inspect them.

Reference is made throughout these guidelines to various documents in addition to the written institutional policy statement. Among them are forms documenting waiver of rights and consent for disclosure, subpoenas, requests for and notices of hearings, and summary proceedings of the hearings. Neither the Act nor the regulations for its implementation stipulate procedures for retention of such written documents. Most questions about the accuracy of education records have, and will continue to be settled informally. Nevertheless, it is clear in both the Act and the regulations that if a complaint regarding violations of the Act should be filed against an institution that the institution's defense will depend largely upon documentation of its procedures and practices in any individual case. Therefore, these guidelines advise institutions to take necessary precautions to retain all documentation pertaining to compliance with the Act. The way in which these records are kept is at the discretion of the institution.

The reader of these guidelines should also note that in several places it is implied that institutions may choose to inform students about certain aspects of the Act either orally or in writing. The foregoing paragraph should be kept in mind when exercising this discretion.

Finally, the reader's attention is directed specifically to the definition of "Education Records" in Section III, Page 8 and 9, of these guidelines where the records which are **not** subject to the provision of the Act are specified. It is apparent that there will be instances where institutional files will contain records which are covered by the Act as well as those which would not be if they were separate. For example, a file for a graduate student, who as a teaching assistant is an employee of the institution, may contain an employee record evaluation which is not covered by the Act, and a copy of the academic record which is covered by the Act. In such cases, to maintain compliance with the Act, the institution should establish separate educational and employment files, thereby avoiding the potential procedural conflict, which might result upon request for access by the student employee.

It is the hope of the Task Force that this document will provide sound and practical assistance to those who seek guidance for compliance with the Act.

A GUIDE TO POSTSECONDARY INSTITUTIONS FOR IMPLEMENTATION OF THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 AS AMENDED

VI. APPENDIX

A. Sample Forms

The authors of these guidelines offer the following sample documents to assist members of individual institutions with the development of their own forms:

1. Annual Notice to Students.

2. Request to Prevent Disclosure of Directory Information.

3. Public Notice Designating Directory Information.

4. Student Request to Inspect and Review Education Records.

5. Request to Review Education Records.

6. Student Requests for Formal Hearing.

7. Sample of a Written Institutional Policy.

(SAMPLE FORM NO. 1)

ANNUAL NOTICE TO STUDENTS

Annually, *(Name of Institution)* informs students of the Family Educational Rights and Privacy Act of 1974. This Act, with which the institution intends to comply fully, was designated to protect the privacy of education records, to establish the right of students to inspect and review their education records, and to provide guidelines for the correction of inaccurate or misleading data through informal and formal hearings. Students also have the right to file complaints with The Family Educational Rights and Privacy Act Office (FERPA) concerning alleged failures by the institution to comply with the Act.

Local policy explains in detail the procedures to be used by the institution for compliance with the provisions of the Act. Copies of the policy can be found in the following offices: _____

_____

The policy is also printed in the _____
The offices mentioned also maintain a **Directory of Records** which lists all education records maintained on students by this institution.

Questions concerning the Family Education Rights and Privacy Act may be referred to the *(campus)* office.

Date of publication _____

(SAMPLE FORM NO. 2)

REQUEST TO PREVENT DISCLOSURE OF DIRECTORY INFORMATION

To: All Students Term/Semester/Year _____

The items listed below are designated as "Directory Information" and may be released for any purpose at the discretion of our institution.

Under the provisions of the Family Educational Rights and Privacy Act of 1974, you have the right to withhold the disclosure of any or all of the categories of "Directory Information" listed below.

Please consider very carefully the consequences of any decision by you to withhold any category of "Directory Information." Should you decide to inform the institution not to release any or all of this "Directory Information," any future requests for such information from non-institutional persons or organizations will be refused.

The institution will honor your request to withhold any of the categories listed below but cannot assume responsibility to contact you for subsequent permission to release them. Regardless of the effect upon you, the institution assumes no liability for honoring your instructions that such information be withheld.

Please mark the appropriate boxes and affix your signature below to indicate your disapproval for the institution to disclose the following public or Directory Information.

		Disclose Information No
Category I	Name, address, telephone number, dates of attendance, class.	☐
Category II	Previous institution(s) attended, major field of study, awards, honors (includes Dean's list), degree(s) conferred (including dates).	☐
Category III	Past and present participation in officially recognized sports and activities, physical factors (height, weight of athletes), date and place of birth.	☐

Date _____ Student Signature _____

If this form is not received in *(campus)* office prior to *(date)* , it will be assumed that the above information may be disclosed for the remainder of the current academic year. A new form for non-disclosure must be completed each academic term/semester/year.

(SAMPLE FORM NO. 3)

PUBLIC NOTICE DESIGNATING DIRECTORY INFORMATION

Date of Publication _____

(Name of institution) hereby designates the following categories of student information as public or "Directory Information." Such information may be disclosed by the institution for any purpose, at its discretion.

Category I Name, address, telephone number, dates of attendance, class.

Category II Previous institution(s) attended, major field of study, awards, honors (includes Dean's list), degree(s) conferred (including dates).

Category III Past and present participation in officially recognized sports and activities, physical factors (height, weight of athletes), date and place of birth.

Currently enrolled students may withhold disclosure of any category of information under the Family Educational Rights and Privacy Act of 1974. To withhold disclosure, written notification must be received in the Office of *(campus)* prior to *(date)* at *(name of institution)* *(address)* Forms requesting the withholding of "Directory Information" are available in the *(campus)* office.

(Name of institution) assumes that failure on the part of any student to specifically request the withholding of categories of "Directory Information" indicates individual approval for disclosure.

(SAMPLE FORM NO. 4)

STUDENT REQUEST TO INSPECT AND REVIEW EDUCATION RECORDS

Date submitted: _____

To: Record Custodian

I wish to inspect my education record maintained in the following office(s):

_____

_____

Print Name (Student) _____

Address _____

Student's Signature _____ Telephone No. _____

.....

To: Student

Your request for inspection of your record was received on *(date)*
The requested record will be available for review on *(date)*

Date _____ School Official's Signature _____

.....

To: Custodian

I have inspected and/or have been informed of the contents of the requested education record identified above and am satisfied with its accuracy and completeness.

Date: _____ Student's Signature _____

.....

To: Record Custodian

I have inspected and/or have been informed of the contents of the requested education record identified above and am not satisfied with its accuracy and completeness for the following reason(s):

_____

_____

Date _____ Student's Signature _____

.....

Observations of the record custodian of disposition of the request:

_____

_____

_____

Date: _____ Custodian's Signature _____

(SAMPLE FORM NO. 5)

REQUEST TO REVIEW EDUCATION RECORDS

Date: _____

NAME OF STUDENT: _____

STUDENT NUMBER: _____

PURPOSE OF REVIEW: _____

_____

_____

ITEM(S) OF INFORMATION REQUESTED: _____

_____

_____

NAME OF REQUESTOR: _____

REQUESTOR'S AFFILIATION: _____

OFFICE TO WHICH REQUEST WAS MADE: _____

I hereby agree to keep the information disclosed to me confidential according to applicable legislation and regulations.

_____

(Signature) *(date)*

.....

DIPOSITION OF REQUEST: ☐ APPROVED
☐ DISAPPROVED

SPECIFY MATERIALS REVIEWED *(RECORDS, TYPES OF INFORMATION):*

_____

_____

_____

(Signature of Official Approving Request) *(date)*

_____

_____

(Name and Title of Official Supervising Review) *(date)*

(SAMPLE FORM NO. 6)

STUDENT REQUEST FOR FORMAL HEARING

To: Chairperson, Hearing Panel Date: _____

From: *(Student's name)*

Subject: Request for Hearing Concerning Student Education Records

I request a formal hearing concerning correction of what I believe to be inaccurate or misleading information, described below, contained in my education records.

Contested Information	Education Record Contested
_____	_____
_____	_____
_____	_____
_____	_____

Please notify me of the date, time, and place of the hearing. My address and telephone number follow:

_____

(Address)

_____

(Student's Signature) *(Telephone No.)*

1ST ENDORSEMENT

From: *(Chairperson, Hearing Panel)* Date: _____

To: *(Student's Name)*

The decision of the Hearing Panel is as follows:

_____

_____

_____

_____

Chairperson, Hearing Panel _____

(SAMPLE OF A WRITTEN INSTITUTIONAL POLICY)

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The Family Educational Rights and Privacy Act of 1974 is a Federal law which states (a) that a written institutional policy must be established and (b) that a statement of adopted procedures covering the privacy rights of students be made available. The law provides that the institution will maintain the confidentiality of student education records.

(Name of Institution) accords all the rights under the law to students who are declared independent. No one outside the institution shall have access to nor will the institution disclose any information from students' education records without the written consent of students except to personnel within the institution, to officials of other institutions in which students seek to enroll, to persons or organizations providing students financial aid, to accrediting agencies carrying out their accreditation function, to persons in compliance with a judicial order, and to persons in an emergency in order to protect the health or safety of students or other persons. All these exceptions are permitted under the Act.

Within the (Name of Institution) community, only those members, individually or collectively, acting in the students' educational interest are allowed access to student education records. These members include personnel in the (as defined by the institution, e.g., Offices of the Registrar, Comptroller, and Financial Aid, the Office of Admissions), and academic personnel within the limitations of their need to know.

At its discretion the institution may provide Directory Information in accordance with the provisions of the Act to include: student name, address, telephone number, date and place of birth, major field of study, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, participation in officially recognized activities and sports, and weight and height of members of athletic teams. Students may withhold Directory Information by notifying the (Campus Official designated, e.g., Registrar) in writing within (the time frame established by the institution, i.e., two weeks after the first day of class for the fall term).

Request for non-disclosure will be honored by the institution for **only one** academic year; therefore, authorization to withhold Directory Information must be filed annually in the (Campus Office designated, e.g., Office of the Registrar).

The law provides students with the right to inspect and review information contained in their education records, to challenge the contents of their education records, to have a hearing if the outcome of the challenge is unsatisfactory, and to submit explanatory statements for inclusion in their files if they feel the decisions of the hearing panels to be unacceptable. The (Campus Official designated, e.g., Registrar) at (Name of Institution) has been designated by the institution to coordinate the inspection and review procedures for student education records, which include admissions, personal, academic, and financial files, and academic, cooperative education, and placement records. Students wishing to review their education records must make written requests to the (Campus Official designated, e.g., Registrar) listing the item or items of interest. Only records covered by the Act will be made available within forty-five days of the request. Students may have copies made of their records with certain exceptions, (e.g., a copy of the academic record for which a financial "hold" exists, or a transcript of an original or source document which exists elsewhere). These copies would be made at the students' expense at prevailing rates which are listed in the current catalog. Education records do not include records of instructional, administrative, and educational personnel which are the sole possession of the maker and are not accessible or revealed to any individual except a temporary substitute, records of the law enforcement unit, student health records, employment records or alumni records. Health records, however, may be reviewed by physicians of the students' choosing.

Students **may not** inspect and review the following as outlined by the Act: financial information submitted by their parents; confidential letters and recommendations associated with admissions, employment or job placement, or honors to which they have waived their rights of inspection and review; or education records containing information about more than one student, in which case the institution will permit access **only** to that part of the record which pertains to the inquiring student. The institution is **not** required to permit students to inspect and review confidential letters and recommendations placed in their files prior to January 1, 1975, provided those letters were collected under established policies of confidentiality and were used only for the purposes for which they were collected.

Students who believe that their education records contain information that is inaccurate or misleading, or is otherwise in violation of their privacy or other rights may discuss their problems informally with the (Campus Office designated, e.g., Office of the Registrar). If the decisions are in agreement with the students' requests, the appropriate records will be amended. If not, the students will be notified within a reasonable period of time that the records will not be amended; and they will be informed by the (Campus Office designated, e.g., Office of the Registrar), of their right to a formal hearing. Student requests for a formal hearing must be made in writing to the (Individual designated, e.g., Vice President for Academic Affairs) who, within a reasonable period of time after receiving such requests, will inform students of the date, place, and the time of the hearing. Students may present evidence relevant to the issues raised

and may be assisted or represented at the hearings by one or more persons of their choice, including attorneys, at the students' expense. The hearing panels which will adjudicate such challenges will be the (Individuals designated, e.g., Vice President for Academic Affairs, representatives of the Vice President for Student Affairs, the Graduate Dean, and the Academic Dean of the student's college).

Decisions of the hearing panels will be final, will be based solely on the evidence presented at the hearing, and will consist of written statements summarizing the evidence and stating the reasons for the decisions, and will be delivered to all parties concerned. The education records will be corrected or amended in accordance with the decisions of the hearing panels, if the decisions are in favor of the students. If the decisions are unsatisfactory to the students, the students may place with the education records statements commenting on the information in the records, or statements setting forth any reasons for disagreeing with the decisions of the hearing panels. The statements will be placed in the education records, maintained as part of the students' records, and released whenever the records in question are disclosed.

Students who believe that the adjudications of their challenges were unfair, or not in keeping with the provisions of the Act may request in writing, assistance from the President of the institution. Further, students who believe that their rights have been abridged, may file complaints with The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, Washington, D.C. 20201, concerning the alleged failures of (Name of Institution) to comply with the Act.

Revisions and clarifications will be published as experience with the law and institution's policy warrants.

B. "The Act"

BEST COPY AVAILABLE

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 AS AMENDED

(Popularly known as the "Buckley Amendment")

Sec. 438. (a) (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be recurred [sic] as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein

and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of institutional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee, and are not available for use for any other purpose; or

(iv) records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional acting in his professional or para-professional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or, intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c) of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

(D) in connection with a student's applications for, or receipt of, financial aid;

(E) State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary in connection with an emergency, appropri-

ate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

(2) No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an eduction agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

C. "Final Regulations"

FINAL RULE ON EDUCATION RECORDS PRIVACY RIGHTS OF PARENTS AND STUDENTS

(Published in Part II of the Federal Register, *Thursday, June 17, 1976, Vol. 41, No. 118.)*

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

Final Rule on Education Records

Notice of proposed rulemaking was published in the FEDERAL REGISTER on January 6, 1975 at 40 FR 1208 setting forth the requirements to be met by an educational agency or institution to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93-380 and amended by section 2 of Pub. L. 93-568).

Three hundred and twenty-one letters of comment were received during the 60-day public comment period which closed on March 7, 1975. All comments were given consideration during the revision of the regulations, the first segment of which was published in final form on March 2, 1976 at 41 FR 9026. This document supersedes the previously published final regulation. The revoked regulation has been incorporated for republication at subparts A (Sections 99.2 and .3), C (Sections 99.21-23), and D (Sections 99.31 and .36) of this document, in order to provide the public with a single document containing all regulatory provisions pertaining to the Family Educational Rights and Privacy Act.

While the Department unquestionably supports the purpose of the law—to provide greater privacy safeguards to parents and students through the application of fair information practice—during the course of developing this final regulation it became evident that translating this intent into practice might create a number of problems. For our part, there was a conscious effort to mitigate any dislocating effects which the regulation might have and, at the same time, remain consistent with the statute.

We believe that some working experience with this regulation will be helpful to the Department in determining whether there is a need to modify this regulation or whether a recommendation for legislative change may be either necessary or appropriate.

As a result, the regulation is being issued in final form, effective upon publication, with the commitment that comments on the regulation and its operation, including its effect on the day-to-day activities of educational agencies and institutions during the 1976-77 school year, will be formally invited for a ninety-day period commencing July 1, 1977. These comments will be used in evaluating this regulation and will be shared with the Congress, as may be necessary, in order to improve the effects and effectiveness of the regulation and

the statute upon which it is based.

In addition to welcoming comments on the substance of these regulations, the Department will also solicit public comment regarding the most appropriate means of enforcing the provisions of the Act. Regarding the means of enforcement available to the Department, while educational agencies and institutions are accountable for Federal funds they receive and must act in conformity with Federal law, the practice of using the expenditure of Federal funds as leverage may not be the most effective way to accomplish the objectives of this statute. We would be interested in your views as to whether other more appropriate means of enforcement than institutional funds cutoff are or should be available.

* * * * *

Effective date. These regulations shall be effective on June 17, 1976.

Dated: June 8, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

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AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.

Subpart A—General

§ 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that nonmonetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

[20 U.S.C. 1232g(b)(1)]

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include

remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65–99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

§ 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31 (a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

[20 U.S.C. 1232g (e) and (f)]

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

[20 U.S.C. 1232g(e)]

§ 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in § 99.12(a)(3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are

used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

[20 U.S.C. 1232g(a)(1) (B) and (C)]

§ 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided*, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

[20 U.S.C. 1232g(a)(1)]

Subpart B—Inspection and Review of Education Records

§ 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§ 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided*, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided*, That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

[20 U.S.C. 1232g(a)(2)]

§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

[20 U.S.C. 1232g(a)(2)]

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and

shall include a summary of the evidence and the reasons for the decision.

[20 U.S.C. 1232g(a)(2)]

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

[20 U.S.C. 1232g(b)(1) and (b)(2)(A)]

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary,

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the

purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)]

§ 99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under § 99.31(a)(1), or to disclosures of directory information under § 99.37.

(c) The record of disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in § 99.31(a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided*, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(4)(B)]

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided*, That the disclosure meets the requirements of paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)(B)]

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

[20 U.S.C. 1232g(b)(3)]

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

[20 U.S.C. 1232g(b)(1)(I)]

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

[20 U.S.C. 1232g(a)(5)(A) and (B)]

Subpart E—Enforcement

§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part.

The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65–99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave. SW., Washington, D.C. 20201.

(20 U.S.C. 1232g(g))

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g(f) and (g))

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b) (1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b) (1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c) (1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c) (2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c) (3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.64–99.67, inclusive.

(20 U.S.C. 1232g(f))

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

§ 99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in

part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

[FR Doc.76-17309 Filed 6-16-76;8:45 am]

D. Internal Revenue Code of 1954, Section 152

INTERNAL REVENUE CODE OF 1954, SECTION 152
(Including amendments and applicable sections of the Tax Reform Act of 1976)

Because both the "Final Regulations" and "The Act" make references to the Internal Revenue Code of 1954, Section 152, it is reproduced here in its entirety from the 1976 edition of the Internal Revenue Code of 1954, with permission from Prentice Hall, Inc., Englewood Cliffs, N.J. 07632.

SEC. 152. DEPENDENT DEFINED.

(a) General Definition.—For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(10) An individual who—

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

Last amendment.—Sec. 153(a) appears above as amended by § [1](b) of Public Law 90-78, Aug. 31, 1967, effective (Sec. 2 of Public Law 90-78, Aug. 31, 1967) with respect to taxable years beginning after Dec. 31, 1966.

Prior amendment.—Sec. 153(a) was previously amended by Sec. 4(a) of Public Law 85-866, Sept. 2, 1958 (qualified effective date rule in Sec. 1(c)(1) of Public Law 85-866, Sept. 2, 1958). Sec. 153(a) as so amended is in P-H Cumulative Changes.

(b) **Rules Relating to General Definition.**—For purposes of this section—

(1) The terms "brother" and "sister" include a brother or sister by the half-blood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.

Last amendment.—Sec. 152(b)(2) appears above as amended by Sec. 912(a) of Public Law 91-172, Dec. 30, 1969, effective (Sec. 912(b) of Public Law 91-172, Dec. 30, 1969) with respect to taxable years beginning after Dec. 31, 1969.

Prior amendment.—Sec. 152(b)(2) was previously amended by Sec. [1](a) of Public Law 86-376, Sept. 23, 1959, effective (Sec. [1](b) of Public Law 86-376, Sept. 23, 1959) for taxable years beginning after Dec. 31, 1958. Sec. 152(b)(2) as so amended is in P-H Cumulative Changes.

(3) The term "dependent" does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer—

(A) born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him, or

(B) legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.

Last amendment.—Sec. 152(b)(3) appears above as amended by Sec. [1](a) of Public Law 92-580, Oct. 27, 1972, effective (Sec. [1](c) of Public Law 92-580, Oct. 27, 1972) with respect to taxable years beginning after Dec. 31, 1971.

Prior amendments.—Sec. 152(b)(3) was previously amended by the following:

Sec. 4(b) of Public Law 85-866, Sept. 2, 1958, effective (Sec. 4(d) of Public Law 85-866, Sept. 2, 1958) for taxable years beginning after Dec. 31, 1957.*

Sec. 2 of Public Law 333, Aug. 9, 1955 (qualified effective date rule in Sec. 3(b) of Public Law 333, Aug. 9, 1955).*

* Sec. 152(b)(3) as so amended is in P-H Cumulative Changes.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

Addition.—Sec. 152(b)(5) was added by Sec. 4(c) of Public Law 85-866, Sept. 2, 1958 (qualified effective date rule in Sec. 1(c)(1) of Public Law 85-866, Sept. 2, 1958).

(c) **Multiple Support Agreements.**—For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary or his delegate may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) **Special Support Test in Case of Students.**—For purposes of subsection (a), in the case of any individual who is—

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(e)(4)),

amounts received as scholarships for study at an educational institution (as defined in section 151(e)(4)) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) **Support Test in Case of Child of Divorced Parents, etc.**—

(1) **General rule.**—If—

(A) a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of

his support for such year from the other parent (referred to in this subsection as the parent not having custody).

(2) Special rule.—The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

(A)(i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for all of such children) for the calendar year, and

(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

(3) Itemized statement required.—If a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary or his delegate, an itemized statement of the expenditures upon which the other parent's claim of support is based.

(4) Exception for multiple-support agreement.—The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(5) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

Addition.—Sec. 152(e) was added by Sec. [1](a) of Public Law 90-78, Aug. 31, 1967, effective (Sec. 2 of Public Law 90-78, Aug. 31, 1967) with respect to taxable years beginning after Dec. 31, 1966.

Tax Reform Act of 1976

[¶ 484] CODE SEC. 152. DEPENDENT DEFINED.

* * * * * * * * * * *

(c) Support Test in Case of Child of Divorced Parents, etc.—

* * * * * * * * * * *

(2) Special rule.—The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year

from the parent not having custody if—

(A) (i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for[1] *each* of such children) for the calendar year, and

(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

• • • • • • • • • • • •

[Footnote ¶ 484] Matter in *italics* in Sec. 152(e)(2)(B)(i) added by section 2139(a), '76 Tax Reform Act, which struck out:

(1) "all"

Effective date (Sec. 2139(b), '76 Tax Reform Act).—Applies to taxable years beginning after the date of enactment of this Act.

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